HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1340 (S/S) year 2003

P.C. Pandey S/o Sri D.D. Pandey

Versus

Director of Technical Education,
Sri Nagar and another.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision: 04.11.2003

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 1340 (S/S) 2003

P.C. Pandey S/o Sri D.D. Pandey ---- Petitioner

Vs.

Director of Technical Education, Sri Nagar,
and another. ---- Respondents.

Mr. S.S. Yadav, counsel for the petitioner.
Learned Standing Counsel for the respondent No. 1 & 2.

Judgment Dated: November 4, 2003:

Hon'ble Rajesh Tandon, J.

Heard Sri S.S. Yadav, learned counsel for the petitioner and learned Standing Counsel for the respondent No. 1 & 2.

By the present writ petition, the petitioner has prayed for a order of certiorari for quashing the order-dated 20.09.2003 by which he has been transferred from Govt. Women Polytechnic, Dehradun to Govt. Polytechnic Uttarkashi.

Brief facts giving rise to the present writ petition are that the petitioner is posted at Govt. Women Polytechnic, Dehradun since 1993 as Instructor Stenography.

The grievance of the petitioner is that the transfer order although was passed on 19th June 2003 but it came to the knowledge of the petitioner on 20.09.2003 in the mid of the session.

The petitioner has further stated that his wife's leg was fractured and she was on medical treatment and his daughter is studying in intermediate.

Counsel for the petitioner has also stated that the petitioner has been transferred at Uttarkashi, which is a very sensitive place due to natural disaster.

So far as the transfer of the petitioner is concerned, the same having been made in the public interest. No interference is required under Article 226 of the Constitution of India. The petitioner has referred the judgment of the Apex Court, that during the middle of the session, the petitioner should not be transferred. The observations of the Apex Court are as follows-

The Apex Court in the case of Mrs. Shilpi Bose and others Vs. State of Bihar and others, AIR 1991 Supreme Court, page 532, it has been held by the Apex Court that the Government servant holding a transferable post as no vested right at one place or the other. It has been further held that the transfer orders issued by the Competent Authority do not violate any of his legal rights. The observations of the Apex Court to that effect are quoted below:-

"In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected partly should approach the higher authorities in the Department. If the Courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration, which would not be conductive to public interest. The High Court over looked these aspects in interfering with the transfer orders."

The Apex Court has observed that the party should approach the higher authorities in the department. The petitioner has already made a representation, which has been mentioned. Authorities concerned shall consider the representation of the petitioner in accordance with the observations made above.

The petitioner has also referred the judgment of the Apex Court in Director of School Education, Madras and others Vs. O. Karuppa Thevan and another, reported in 1996 (1) UPLBEC 347 so far as the transfer in the academic session is concerned. It reads as under:-

"The tribunal has erred in law in holding that the respondent employee ought to have been heard before transfer. No law requires an employee to be heard before his transfer when the authorities make the transfer for the exigencies of administration. However, the learned counsel for the respondent, contended that in view of the fact that respondent's children are studying in school, the transfer should not have been effected during mid-academic term. Although there is no

such rule, we are of the view that in effecting transfer, the fact that the children of an employee are studying should be given due weight, if the exigencies of the service are not urgent.

The learned counsel appearing for the appellant was unable to point out that there was such urgent in the present case that the employee could not have been accommodated till the end of the current academic year. We, therefore, while setting aside the impugned order of the Tribunal, direct that the appellant should not effect the transfer till the end of the current academic year. The appeal is allowed accordingly with no order as to costs."

So far as the order of transfer is concerned, the same having been passed in the public interest, however, liberty is given to the petitioner to place his representation before the authorities who shall decide the same in view of the aforesaid observations within a period of one month from the production of a certified copy of this order.

Consequently, the writ petition is disposed of with the aforesaid observations. The transfer order shall remain in abeyance for a period of six weeks from the date of filing of certified copy of this order.

There will be no order as to costs.

(Rajesh Tandon, J.)

NCM: